



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 230316-0077]**

**RTID 0648-XC789**

### **Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2023 River Herring and Shad Catch Cap Reached for Midwater Trawl Vessels in the Cape Cod Catch Cap Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; possession limit adjustment.

**SUMMARY:** NMFS is implementing a 2,000-lb (907.2-kg) Atlantic herring possession limit for herring vessels fishing with midwater trawl gear in the Cape Cod Catch Cap Closure Area. This is required because NMFS projects that midwater trawl herring vessels will catch 95 percent of the river herring and shad catch cap allocated to the Cape Cod Catch Cap Area before the end of the fishing year. This action is intended to prevent overharvest of river herring and shad.

**DATES:** Effective 0001 hr local time, April 26, 2023, through December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Maria Fenton, Fishery Management Specialist, 978-281-9196.

#### **SUPPLEMENTARY INFORMATION:**

The Regional Administrator of the Greater Atlantic Regional Fisheries Office monitors river herring and shad catch by Atlantic herring vessels. River herring and shad catch caps are allocated to the herring fishery by area and gear type. The four river herring and shad catch caps that are currently allocated to the herring fishery are:

- Gulf of Maine Midwater Trawl Catch Cap;
- Cape Cod Midwater Trawl Catch Cap;
- Southern New England Bottom Trawl Catch Cap; and
- Southern New England Midwater Trawl Catch Cap.

Catch from all trips that land more than 6,600 lb (2,994 kg) of herring is counted towards the applicable river herring and shad catch cap. Regulations at 50 CFR 648.201(a)(4)(ii) require NMFS to implement a 2,000-lb (907.2-kg) herring possession limit for vessels fishing with the specified gear in a specified catch cap closure area beginning on the date that catch is projected to reach 95 percent of the river herring and shad catch cap for that area.

Based on vessel reports, dealer reports, and other available information, the Regional Administrator estimates that midwater trawl herring vessels will have caught 96 percent of the 2023 river herring and shad catch cap allocated to the Cape Cod Catch Cap Area by April 20, 2023. Therefore, effective 0001 hr local time April 26, 2023, through 2400 hr local time on December 31, 2023, midwater trawl vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of herring from the Cape Cod Catch Cap Closure Area per trip; or land herring from the Cape Cod Catch Cap Closure Area more than once per calendar day. Also effective 0001 hr local time, April 26, 2023, through 2400 hr local time, December 31, 2023, federally permitted dealers may not attempt or do any of the following: Purchase; receive; possess; have custody or control of; sell; barter; trade; or transfer more than 2,000 lb (907.2 kg) of herring per trip or calendar day from a midwater trawl vessel fishing in the Cape Cod Catch Cap Closure Area, unless it is from a vessel that enters port before 0001 hr local time on April 26, 2023, and catch is landed in accordance with State management measures.

Midwater trawl vessels may transit through or land in the Cape Cod Catch Cap

Closure Area with more than 2,000 lb (907.2 kg) of herring on board, provided that: The herring were caught in an area not subject to a 2,000-lb (907.2-kg) limit; all fishing gear is stowed and not available for immediate use as defined by § 648.2; and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

### **Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because it would be impracticable, unnecessary, and contrary to the public interest. Data only recently became available indicating that midwater trawl herring vessels will catch 95 percent of the river herring and shad catch cap allocated to the Cape Cod Catch Cap Area before the end of the fishing year. High-volume catch and landings in the herring fishery can increase river herring and shad catch relative to catch caps quickly. If implementation of this action is delayed to solicit prior public comment, the 2023 river herring and shad catch cap allocated to the Cape Cod Catch Cap Area will likely be exceeded; thereby undermining the conservation objectives of the Herring Fishery Management Plan (FMP). Additionally, the regulations at § 648.201(a)(4)(ii) are designed to be implemented as quickly as possible to prevent catch from exceeding river herring and shad catch caps and NMFS is acting in accordance with those regulations to carry out the fishery management plan under the authority provided in section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act. These regulations were subject to public notice and opportunity to comment when they were first adopted in 2014. Further, herring fishing industry participants monitor catch closely and anticipate potential possession limit adjustments as catch totals approach river herring and shad catch caps, and they expect these actions to occur in a timely way

consistent with the FMP's objectives. For the reasons stated above, NMFS also finds good cause to waive the 30-day delayed effectiveness in accordance with 5 U.S.C 553(d)(3).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 24, 2023.

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Kelly Denit,

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National Marine Fisheries Service.

[FR Doc. 2023-08877 Filed: 4/24/2023 4:15 pm; Publication Date: 4/27/2023]